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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/06/2003

38

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/491,639

Applicant(s)

BLUCHER, TIMOTHY L.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,11 and 28-63 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,49-51 and 60-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5,9,11,28-48,52-59 and 63 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 42-63 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 34.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claims 13-19 have been canceled, claims 8, 10, 12 and 20-27 remain canceled, claims 1-7, 9, 11 and 28-63 are pending.

Claims 6 and 7 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5 and 8.

Newly submitted claims 49-51 and 60-62 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 49-51 and 60-62 are directed to a non-elected specie.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 49-51 and 60-62 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 6, 7, 49-51 and 60-62 have been withdrawn, claims 1-5, 9, 11, 28-48, 52-59 and 63 are treated according to their merits.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5, 9, 11 and 28-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 states that the liner is disposed within the pan such that the bottom edge is disposed over the pan proximate

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the bottom panel of the pan. Claim 1 then states that contoured edges (a portion of the single bottom edge) extend upward from the flat bottom edge (a different portion of the single bottom edge). In the configuration where the liner is disposed in the pan, the liner has a different configuration than as shown in Fig. 8A where the contoured edges lie flat against the bottom panel of the pan as shown in Fig. 1-3. Also, the demonstrations conducted on two separate occasions have demonstrated liners being disposed within rectangular pans wherein it is believed that the contoured edges laid flat against the bottom panel of the pan rather than extend upwardly from the flat bottom edge. Claims 32 and 34 have similar deficiencies.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 9, 11, 28-37, 42-48, 52-59 and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because the claim sets forth a “single contoured bottom edge” which has the constituent parts of a “flat bottom edge” and “contoured edges.” It is believed that referring to the “flat bottom edge” as a “flat bottom edge portion” and the “contoured edges” as “contoured edge portions” would provide greater clarity. This would avoid antecedent basis errors associated with “said flat bottom edge” where the “single contoured bottom edge” is flat and planar, antecedent basis errors associated with “said contoured bottom edge” where the “flat bottom edge” is also considered “contoured,” and antecedent basis errors associated with “said contoured edges” which doesn’t differentiate from the “single bottom contoured edge.” Claims

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32, 34 and 36 are similarly indefinite and could benefit from the clarity provided by adding the word “portion” where appropriate.

Applicant has claimed a “flat bottom edge.” Although this limitation is definite, applicant may want to select a word such as “linear” or “straight” in place of “flat” to describe the bottom edge to have the intended effect of claiming over a curved bottom edge that is contained in a plane. A helical line is one example of a line which is not flat or planar. In claims 4 and 5, the language “a plane defined by said flat bottom edge” doesn’t define one horizontal plane since a linear bottom edge could be any of a number of planes.

Claim 2 seems unnecessarily repetitive of a “single contoured bottom edge,” “flat bottom edge” and “contoured edges” of claim 1.

Claim 42 is indefinite because it contains an indirect limitation of “said flat polymeric sides” where the sides had been introduced as “polymeric sides.” Claim 55 is similarly indefinite.

Claim 53 is indefinite because the means-plus-function limitations of “pan means for holding” and “contoured bottom edge means for providing a sealed bottom” are indefinite. It can’t be determined if the pan means is a means for holding or a means for panning (as in panning for gold). It can’t be determined if the edge means is a means for edging (cutting at edge, such as by scissors) or a means for providing a seal (such as a heat sealing apparatus).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 38, 42-45 and 53-56 rejected under 35 U.S.C. 102(b) as being anticipated by Binks.

Binks discloses a pan liner system comprising a pan and a liner (see Fig. 2) made of polytetrafluoroethylene (TFE or TEFLON) which is a polymeric material capable of withstanding a temperature of at least about 400 degrees F, the polymeric material is formed in the shape of a bag (as shown in Fig. 2 wherein the material is in close contact with the inside contours of the pan) having side edges (the edges that correspond to the junction of two side walls) and a contoured bottom edge (the bottom edge that corresponds to the juncture of a side wall and the bottom), the bottom edge having a single central edge (the central 1/3 portion of the bottom edge that consists of 1/3 of the bottom edge in the middle of two end 1/3 portions on each of its ends) and two contoured edge portions (the two end 1/3 portions), each of said contoured edge portions extending outwardly from one end of the single central edge and joined to one of said side edges, whereby said contoured edge portions substantially eliminate entrapment of food occurring in corners of bags lacking said contoured edge portions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9, 30-38, 42-48, 52-59 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Geigel and Van Erden et al. (Van Erden).

Binks discloses a pan liner system for forming an improved barrier between a pan and food disposed therein, the system comprising: a pan (11) and a drop-in polymeric

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(polytetrafluoroethylene (TFE)) pan liner (10) having a contour fit, the pan having a bottom panel and four side walls and a pan top opening and the liner having a wavy shape and somewhat resistant to conformance to the confronting surfaces of the pan when cold, when heated the liner becomes substantially limp and intimately hugs the surface of the pan as shown in Fig. 2 (see column 5, lines 50-64 and column 6, lines 31-52). Binks discloses the invention except for the contoured bottom edge configuration.

Geigel teaches a bag having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. Van Erden teaches a liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. It would have been obvious to modify the shape of the Binks liner to have the flat bottom edge and two straight tapered edges motivated by the elimination of the tendency to snag and improved stackability while avoiding the more cumbersome procedures of gusseted bag manufacture and motivated by the freeing of the two bottom corners of the bag from interfering with easy reception and packing of the filled bag in a fairly close fitting carton.

Claims 11, 28, 29, 39, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Binks in view of Geigel and Van Erden as applied to claims 1 and 38 above, and further in view of the M & Q Plastic Products Brochure (the M & Q brochure).

The combination discloses the invention except for the polyamide or polyester material with a 13,000 p.s.i. tensile strength and which is non-blocking. The M & Q brochure teaches a high temperature nylon (polyamide) resin material for bags used in food applications which can

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withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking.

It would have been obvious to replace the liner material of Ibsch or Ferlanti with the high temperature nylon resin in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.

For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

Claims 1-5, 9, 11, 28-48, 52-59 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ibsch or Ferlanti in view of Geigel, Van Erden and the M & Q Plastic Products Brochure (the M & Q brochure).

Ibsch discloses a pan liner system comprising a pan (10) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (the bottom layer of the plurality of laminations 14) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge (the circular edge that circumscribes the flat bottom), a flexible sidewall extending upwardly from the bottom end (16),

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an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge (17, 18), the pan liner not having dog ears.

Ferlanti discloses a pan liner system comprising a pan (12) with a bottom panel and a sidewall extending upwardly from the bottom panel and a pan liner (10) (the bottom layer of the plurality of laminations) having a contoured fit disposed within the pan to cover an interior surface of the pan, the pan liner including a contoured bottom edge, a flexible sidewall extending upwardly from the bottom end, an open top end extending upwardly beyond the top edge of the pan's sidewall and being folded over the pan's top edge, the pan liner not having dog ears. The pan liner (10) is made from a material comprising plastic and is made of metal with a polytetrafluoroethylene (TEFLON) film (see col. 3, lines 26-33). Regardless of the unsuitability of some plastics as mentioned in column 1, it seems that Ferlanti is rather clear that plastic is quite suitable. Polytetrafluoroethylene is neither fragile or likely to ignite.

Ibsch and Ferlanti disclose the invention except for the configuration of the contoured bottom edge, the liner isn't a single drop-in type and the liner material isn't high temperature plastic material, with a 13,000 p.s.i. tensile strength which is non-blocking.

Geigel teaches a bag having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. Van Erden teaches a liner having a contoured bottom edge with a flat bottom edge which is joined to two straight tapered edges having a predetermined angle with respect to the bottom edge of between 40 and 55 degrees. It would have been obvious to modify the shape of the liner to have the flat bottom edge and two straight tapered edges motivated by the elimination of the tendency to snag and improved stackability while avoiding

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the more cumbersome procedures of gusseted bag manufacture and motivated by the freeing of the two bottom corners of the bag from interfering with easy reception and packing of the filled bag in a fairly close fitting carton.

The M & Q brochure teaches a high temperature nylon resin material for bags used in food applications which can withstand temperatures of 400 degrees F, has 13,000 p.s.i. tensile strength and is non-blocking. It would have been obvious to modify the liner material of Ibsch or Ferlanti with the high temperature nylon resin liner in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking.


For claim 41, polyesters having high strength and high temperature resistance such as liquid crystal polymer are well known. It would have been obvious to modify the liner material of the combination to be polyester and specifically liquid crystal polyester in order to provide a material which is stronger per weight with at least 13,000 p.s.i. to withstand tearing and breaking when liners are manipulated and which can withstand temperatures of 400 degrees F to ensure heat resistance for cooking. It also would have been obvious to modify the nylon to be a nylon-polyester blend in order to add strength to the nylon resin in order to resist puncture and breaking of the liner.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the

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examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

August 4, 2003